

COMAR 21.11.03.11

.11 Waiver.

- A. If, for any reason, the apparent successful bidder or offeror is unable to achieve the contract goal for each certified MBE participation specified as having a subcontract goal or the overall MBE contract goal, the bidder or offeror may request, in writing, a waiver to include the following:
- (1) A detailed statement of the efforts made to select portions of the work proposed to be performed by certified MBE's, including the work to be performed by each MBE classification if an MBE subgoal has been specified, in order to increase the likelihood of achieving the stated goal;
 - (2) A detailed statement of the efforts made to contact and negotiate with certified MBE's, and if appropriate, by certified MBE classification, including:
 - (a) The names, addresses, dates, and telephone numbers, and classification of certified MBE's contacted, and
 - (b) A description of the information provided to certified MBE's regarding plans, specifications, and anticipated time schedule for portions of the work to be performed;
 - (3) As to each certified MBE that placed a subcontract quotation or offer that the apparent successful bidder or offeror considers not to be acceptable, a detailed statement of the reasons for this conclusion;
 - (4) A list of certified MBEs including, if applicable, certified MBEs in each MBE classification, found to be unavailable, which shall be accompanied by an MBE unavailability verification form signed by the certified MBE, or a statement from the apparent successful bidder or offeror that the certified MBE refused to give the written verification;
 - (5) The record of the apparent successful bidder's or offeror's compliance with the outreach efforts required under Regulation .09C(2) (a)-(e) of this chapter; and
 - (6) If the request for a waiver is for a certain MBE classification within an overall MBE goal, the bidder or offeror shall demonstrate reasonable efforts to meet the overall MBE goal with other MBE classification or classifications.
- B. A waiver of a certified MBE contract goal may be granted only upon a reasonable demonstration by the bidder or offeror that certified MB subcontract participation was unable to be obtained, or was unable to be obtained at a reasonable price or in the appropriate MBE classifications, and if the agency head or designee determines that the public interest is served by a waiver. In making a determination under this section, the agency head or designee may consider engineering estimates, catalogue prices, general market availability, and availability of certified MBEs in the area in which the work is to be performed, other bids or offers and subcontract bids or offers substantiating significant

variances between certified MBE and non-MBE cost of participation, and their impact on the overall cost of the contract to the State and any other relevant factor.

- C. An agency head may waive any of the provisions of Regulations .09-.10 of this chapter for a sole source, expedited, or emergency procurement in which the public interest cannot reasonably accommodate use of those procedures.
- D. When a waiver is granted, except waivers under §C of this regulation, one copy of the waiver determination and the reasons for the determination shall be kept by the MBE Liaison Officer with another copy forwarded to the Office of Minority Affairs.

COMAR 21.11.03.12 Amendment for Unforeseen Circumstances

If at any time before execution of a contract, the apparent successful bidder or offeror determines that a certified MBE listed on the schedule for participation required under Regulation .10B(2) of this chapter has become or will become unavailable, then the apparent successful bidder or offeror immediately shall notify the procurement officer. Any desired change in the schedule for the participation shall be approved in advance by the certified MBE subcontractor to perform the work. Desired changes occurring after the date of contract execution may occur only upon written approval by the agency head and subsequently by contract amendment.